

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT:	Sprogis	GROUP:	3622
SERIAL NO:	10/643,120	EXAMINER:	Carlson, Jeffrey
FILED:	August 18, 2003		
FOR:	VIDEO DATA SCHEDULING SYSTEM		

Mail Stop Appeal Briefs - Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

REPLY BRIEF

Pursuant to 37 C.F.R. §41.41, Applicant respectfully files this Reply Brief responsive to the Examiner's Answer mailed June 8, 2010 in connection with the above-referenced.

I. The New Ground of Rejection in the Examiner's Answer

In the Examiner's Answer mailed June 8, 2010, the Examiner includes a new ground of rejection of claims 5 and 8 (as well as claims 6 and 7 that each depend from claim 5) under 35 U.S.C. §112, ¶2.

Claim 5 includes the following limitation:

projector control means configured to present said first presentation data using said first projector assembly such that said first subset of content data will be shown prior to a first start time associated with said first show, and configured to present said second presentation data using said second projector assembly such that said second subset of content data will be shown prior to a second start time associated with said second show.

Claim 8 includes the following limitation:

projector control means configured to present said first presentation data using said first projector assembly such that said first plurality of subsets of content data will be shown prior to a first start time associated with said first show, and configured to present said second presentation data using said second projector assembly such that said second plurality of subsets of content data will be shown prior to a second start time associated with said second show.

The Examiner's Answer states that the above limitations each invoke 35 U.S.C. §112, ¶6, and that although the written description in the specification mentions the use of a general purpose computer, the written description does not provide the *algorithm* for use on a general purpose computer to achieve the functionality of the claimed projector control means (Examiner's Answer, pages 7 – 9).

II. Argument

The Specification states, in part:

The HTML content is accessed and rendered to the screen or other output device by a web browser such as INTERNET EXPLORER (sold by Microsoft Corporation of Redmond, Washington) or NAVIGATOR (sold by Netscape, Inc. of Mountain View, California). The browser requests, receives and renders the HTML stream into a video and audio presentation. The browser is the end-user of the HTML content otherwise known as the client. The content comes from another process, a server process, that is always running and replies to content requests. Serving HTML requires a transport protocol to move the content from the server process to the client. This protocol is the Hypertext Transport Protocol (HTTP) and the server process is called an HTTP server.

Specification, page 12, lines 13 – 22.

The Specification further states that:

As shown in Figure 14, the client assembly logical architecture includes a two tier architecture composed of HTML/XML browser 360 exchanging data with an HTTP server

362. This architecture may be used regardless of whether the client assembly is stand-alone or multi-screen. Presentations are received from the server-side production daemon 364 and stored in a local volume 366. Transfer of the volume across the WAN is accomplished through the use of file transfer protocol (FTP), HTML presentation, a copy or move executed across a Network File System (NFS), or through a custom process using sockets. Once the presentation is local to the client assembly, it is ready to be presented to an audience.

Presentation begins when the HTML/XML browser 360 is loaded by a person at the client PC. The browser is set to the particular screen's URL. The local HTTP server 362 responds by sending the presentation from the local volume to the browser. The contents of the browser are displayed through the connected display hardware to be viewed by the intended audience.

Specification, page 41, lines 1 – 14. The Specification states that “[e]ach of the HTML format, HTTP protocol, the HTTP server, and the browser, work together to bring a presentation to an audience in the preferred embodiment” (Specification, page 14, lines 13 – 14) and explains that:

The preferred embodiment pulls the content from the server to the client through an event or action initiated and controlled by the client. Techniques of pushing the data include, but are not limited to, webcasting technologies provided by the POINTCAST program (sold by EntryPoint of San Diego, California), and the CHANNEL program (sold by Microsoft Corporation).

Specification, page 15, lines 16 – 20.

With regard to alternate embodiments, the Specification states that:

there are other languages, transfer protocols and rendering software that could be combined to create the same or similar result. An alternate means will certainly include the successor to HTML, Extensible Markup Language (XML) using Extensible Link Language (XLL), emerging and related specifications. Other alternate means serving the same purpose could also be derived from Standard Generalized Markup Language (SGML).

Specification, page 14, lines 15 – 20.

In support of the Examiner's rejection of Claims 5 and 8 under §112, §2, the Examiner primarily cites *Aristocrat Technology, Inv. v. International Game Technology*, 521 F.3d 1328, 86 U.S.P.Q.2d 1235 (Fed. Cir. 2008) and *WMS Gaming, Inc. v. International Game Technology*, 184 F.3d 1339, 51 U.S.P.Q.2d 1385 (Fed. Cir. 1999). As discussed below, neither of these cases supports such a finding on the facts of the present case. The Examiner also cites *Altiris, Inc. v. Semantec Corp.*, 318 F.3d 1363 (Fed. Cir. 2003) (in which the court reversed construction of a claim term to "means for booting said digital computer" and affirmed construction of a claim term to "means for connecting"), and *In re Donaldson Co.*, 16 F.3d 1189, 29 U.S.P.Q.2d 1845 (Fed. Cir. 1994) (reversing a finding of obviousness regarding a dust collection device and holding that 35 U.S.C. §112, ¶6 applies both during prosecution before the U.S. Patent and Trademark Office as well as during litigation).

In *Aristocrat Technology, supra*, the court affirmed a finding of indefiniteness of claims to an electronic slot machine that included claim terms to "game control means" and "control means" where the disclosed structure was a standard microprocessor-based gaming machine with "appropriate programming". The Specification included no further disclosure in support of the game control means or the control means, and the patentee argued that simply disclosing a general purpose computer was sufficient structure. The court disagreed, and stated in particular that:

Because general purpose computers can be programmed to perform very different tasks in very different ways, simply disclosing a computer as the structure designated to perform a particular function does not limit the scope of the claim to 'the corresponding structure, material or acts' that perform the function, as required by section 112 paragraph 6.

Aristocrat, 521 F.3d at 1333.

In *WMS Gaming, supra*, the court construed terms in claims to slot machine gaming devices that included the terms “means for assigning a plurality of numbers”, “means for selecting one of said plurality of numbers” and “means for stopping said reel”. The court construed each of these terms under 35 U.S.C. §112, ¶6 to include a general purpose computer as well as the algorithm disclosed in the specification of the patent.

Unlike the patentee in *Aristocrat, supra*, and like the patentee in *WMS Gaming, supra*, the Applicant in the present application *has* disclosed algorithms for achieving the function of the projector control means of claims 5 and 8. The Specification in the present case does not simply state that the claimed functionality may be performed on a personal computer with “appropriate programming”. By contrast, in the present application, the Applicant specifically identified several well known commercially available programs for providing the functionality to a personal computer in order to achieve the functionality of the projector control means of claims 5 and 8.

In particular, the Specification specifically states that HTML content is accessed and rendered to the screen or other output device by a web browser such as INTERNET EXPLORER (sold by Microsoft Corporation of Redmond, Washington) or NAVIGATOR (sold by Netscape, Inc. of Mountain View, California), and the browser requests, receives and renders the HTML stream into a video and audio presentation (Specification, page 12, lines 13 – 17). The Specification further explains that the browser is the end-user of the HTML content otherwise known as the client, and that serving HTML requires a transport protocol to move the content from the server process to the client (Specification, page 12, lines 17 – 20). The Specification identifies that this protocol is the Hypertext Transport Protocol (HTTP) and the server process is called an HTTP server (Specification, page 12, lines 20 – 22).

With reference to Figure 14, the Specification states that presentations are received from the server-side production daemon 364 and stored in a local volume 366, and that transfer of the volume across the WAN is accomplished through the use of file transfer protocol (FTP), HTML presentation, a copy or move executed across a Network File System (NFS), or through a custom process using sockets (Specification, page 41, lines 1 – 8). The Specification explains that a presentation begins when the HTML/XML browser 360 is loaded by a person at the client PC (Specification, page 41, lines 10 – 11). The Specification then discloses that the browser is set to the particular screen's URL, that the local HTTP server 362 responds by sending the presentation from the local volume to the browser, and that the contents of the browser are then displayed through the connected display hardware to be viewed by the intended audience (Specification, page 41, lines 11 – 14).

The Specification also discloses that system may pull the content from the server to the client through an event or action initiated and controlled by the client, or may push the data using, for example, webcasting technologies provided by the POINTCAST program (sold by EntryPoint of San Diego, California), and the CHANNEL program (sold by Microsoft Corporation) (Specification, page 15, lines 16 – 20).

The Specification even discloses that *other* languages, transfer protocols and rendering software may be used to achieve the function of the projector control means, and specifically identifies such other languages, transfer protocols and rendering software (Specification, page 14, line 13 – page 15, line 20). In particular, the Specification further discloses the alternate use of Extensible Markup Language (XML) using Extensible Link Language (XLL), Standard Generalized Markup Language (SGML), and the use of a Document Type Definition (DTD), any which could render the content natively or could host binary objects that render tagged sub-

contents, thereby eliminating the need for HTML, XML or any other SGML-based language (Specification, page 14, line 13 – page 15, line 3).

Applicant respectfully submits therefore, that the Examiner's new ground of rejection of claims 5 – 8 is in error, and it is respectfully urged that this new ground of rejection be reversed.

III. Conclusion

For the foregoing reasons as well as the reasons presented in the Appeal Brief filed October 16, 2008, applicant respectfully requests that the Board of Patent Appeals and Interferences reverse the Examiner's final rejections of each of claims 1 – 8.

Respectfully submitted,



William E. Hilton
Registration No. 35,192
Gauthier & Connors LLP
225 Franklin Street, Suite 2300
Boston, Massachusetts 02110
Telephone: (617) 426-9180
Extension 111